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No. 96-299

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

TRANS WORLD AIRLINES, INC., and WILLIAM D. HART and GARY D. DILLEY, as Members of the Retirement Board of the Retirement Plan for Pilots of Trans World Airlines, Inc.,

Petitioners,

v.

ANTHONY V. SINICROPI, H.O. VAN ZANDT, and W.A. MURPHEY, as Members of the Retirement Board of the Retirement Plan for Pilots of Trans World Airlines, Inc., WILLIAM L. MEUSEL, JR., and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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REPLY BRIEF FOR PETITIONERS

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THE COURT OF APPEALS' DECISION TO DISREGARD ERISA'S STANDARDS IN REVIEWING AN ERISA FIDUCIARY'S DETERMINATION UNDER AN ERISA-COVERED PENSION PLAN DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND CANNOT BE RECONCILED WITH THE PLAIN LANGUAGE OF THE STATUTE.

This case involves two federal statutes, the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001, et seq. (1994), and the Railway Labor Act ("RLA"), 45 U.S.C. §§ 151, et seq. (1994). Both statutes require initial resort to non-judicial dispute resolution, and both statutes permit subsequent review of the initial decision by the federal courts. *Compare* 29 U.S.C. §§ 1132(a)(1)(B), 1132(a)(3), 1133(2) *with* 45 U.S.C. §§ 153 First (m), (p), (q), 184. The two statutes differ, however, on the standard of review to be applied by the courts.

The standard under the RLA is "among the narrowest known to the law." *Skidmore v. Consolidated Rail Corp.*, 619 F.2d 157, 159 (2d Cir. 1979), *cert. denied*, 449 U.S. 854 (1980). It permits a reviewing court to set aside an arbitration board's ruling only for (1) failure of the Board to comply with the requirements of the RLA, (2) failure of the Board to conform or confine itself to matters within the scope of its jurisdiction, or (3) fraud or corruption. 45 U.S.C. §§ 153, First (m), (p), (q). The standard under ERISA is far less deferential. It contemplates either de novo review of the plan fiduciary's decision or, if the plan document gives the fiduciary discretion to interpret the plan, review under an abuse of discretion standard. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). *See also Varity Corp. v. Howe*, —— U.S. ——, 116 S.Ct. 1065, 1079 (1996) ("characterizing a denial of benefits as a breach of fiduciary duty does not necessarily change the standard a

court would apply" under *Firestone Tire & Rubber Co. v. Bruch*).

Respondents acknowledge the fundamental conflict between the two statutes' standards. Pointing to a number of lower court decisions, however, they assert that section 514(d) of ERISA resolves the conflict in favor of the RLA.

But this Court's decision in *Guidry v. Sheet Metal Pension Fund*, 493 U.S. 365 (1990), the statute's plain language, and pronouncements by the United States Department of Labor prove otherwise.

In *Guidry*, this Court considered whether section 514(d) of ERISA allows another federal labor statute (the Labor-Management Reporting and Disclosure Act of 1959) to override the express anti-alienation provision of ERISA. Section 514(d) of ERISA provides that "[n]othing in this title shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . ." 29 U.S.C. § 1144(d). Applying the plain language of that section, the Court held that, while ERISA does not displace another federal statute, nothing in section 514(d) makes ERISA's express provisions give way to the other federal statute. "Such an approach would eviscerate the protections" embodied in ERISA. 493 U.S. at 375. Moreover, it would conflict with "an elementary tenet of statutory construction that '[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one . . . .'" *Id.* (quoting *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974)).

For all private pension plans, including TWA's Pilots Plan, section 503(2) of ERISA requires initial resort to a non-judicial, administrative review of disputes arising from benefit claim denials. 29 U.S.C. § 1133(2). In doing so, it expressly designates the reviewing body, be it an individual or an arbitration board, as a plan "fiduciary"

subject to the statute's fiduciary responsibility provisions and enforcement mechanisms. *Id.* This is so regardless of whether the administrative review is conducted by an individual or, as here, an arbitration board. DOL Advisory Opinion 79-66A, WSB File No. 79-123 (Sep. 14, 1979); DOL Information Letter to Fred M. Schuchart, WSB File No. 81-113 (Oct. 23, 1981). Thus, ERISA applies, and section 514(d) of ERISA cannot excuse courts from applying it.

In sum, the lower courts' decision to jettison ERISA's standard in favor of the RLA's simply cannot be reconciled with this Court's prior decisions or the plain language of the statute. The decision wrongly threatens to deprive the 2.9 million Americans covered by transportation industry pension plans of the uniform standards of "responsibility and conduct" and guarantee of "ready access to the Federal courts" that Congress provided for in ERISA. 29 U.S.C. § 1001(b). One cannot reasonably infer that Congress intended eligibility decisions made by one brand of ERISA fiduciary essentially to be immune from review under ERISA's standards simply because that fiduciary administers a plan covering employees in an RLA-regulated industry.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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